



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: John Stufflebean

**SUBJECT: NORCAL/CWS WASTE
CHARACTERIZATION STUDY**

DATE: May 30, 2006

Approved

/s/

Date

05/30/06

RECOMMENDATION

Accept this report clarifying the Norcal/California Waste Solutions (CWS) commitment to conduct a Waste Characterization Study.

BACKGROUND

This report is provided in response to questions raised in the FY 2006-07 Proposed Operating Budget Study Sessions. Councilmember LeZotte requested information regarding the status of the waste characterization study required under the Second Amendment between the City of San Jose and Norcal Waste Systems of San Jose, as well as the Permanent Injunction and Final Judgment Pursuant to Stipulation between the City of San Jose and CWS (Norcal's recycling processing sub-contractor).

On June 17, 2003, the Department of Planning, Building, and Code Enforcement issued an Immediate Cease and Desist Order and Immediate Corrective Action Order to CWS for multiple permit violations existing at CWS's materials recovery facility from the period of July 1, 2002 through May 31, 2003. An in-depth investigation by the City Attorney's Office (CAO) confirmed the action taken by the Department of Planning, Building and Code Enforcement. The Permanent Injunction and Final Judgment Pursuant to Stipulation (Judgment) was executed on February 27, 2004. The Judgment required CWS to pay the City a total of \$150,000.

On December 10, 2004, the City Council approved the Second Amendment to the Agreement between the City of San Jose and Norcal Waste Systems of San Jose (Amendment) for integrated waste management services. As part of the Amendment, Norcal is required to contribute \$100,000 towards the costs of a waste characterization study for materials collected in the Recycle Plus program.

ANALYSIS

Stipulated Judgment

Article Three (3) of the Judgment required that “CWS shall pay the City \$150,000 in settlement of any and all claims related to the Complaint and the Cease and Desist Order. The \$150,000 includes but is not limited to reimbursement by CWS to the City for costs incurred by City to date on compliance and related issues, as well as anticipated future monitoring costs.” The three \$50,000 installments were due January 30, 2004, December 1, 2004, and December 1, 2005. The City has received all payments as required under the Judgment. In lieu of determining specific reimbursement of individual departments (City Attorney’s Office, Code Enforcement, Environmental Services, etc.), the funds have been deposited in the General Fund.

In Article Six (6) of the Judgment, “CWS recognizes that the City has a right to conduct waste characterization studies of the material at the CWS facility in San Jose. CWS will allow City or its agent reasonable access to the CWS facility to allow waste characterization studies and will fully cooperate with City or its agent in any characterization study.”

Waste Characterization Study

To date, Norcal has contributed \$40,000 towards the waste characterization study. The amount has been utilized to obtain the services of an independent consultant acting as project manager responsible for developing the scope of the study as well as selecting and managing a contractor to conduct the study. The independent consultants will continue to draw down on the remaining \$60,000 in their capacity as project managers and during the report writing process.

In the fall of 2005, Franklin Associates was selected as the independent consultant by mutual agreement among the parties represented on the steering committee, which includes representatives from Norcal, CWS, Green Team, and the City. Franklin Associates has conducted numerous studies on behalf of the U.S. Environmental Protection Agency.

The major tasks addressed by Franklin Associates include:

- Develop a scope of work for all phases of the waste characterization study
- Support the steering committee in the selection of a vendor to conduct the study
- Develop the technical scope of work for the selected vendor
- Provide oversight and management during the execution of the study
- Develop a draft report of the results of the study
- Support the steering committee to develop and present to City Council a report regarding the findings

The first task has been completed, including tours of both materials recovery facilities in San Jose, as well as interviews with the stakeholders allowing each to express their concerns and objectives for participating in the study. The consultant is now ready to begin the next two tasks pending the outcome of the budget review process and approval of funding for the study.

CONCLUSION

There is no further action to be taken by the City with regards to the Judgment between the City and CWS.

Progress on preparing for the waste characterization study is continuing, and City staff is tracking Norcal's financial requirements as outlined in the Second Amendment.

The next steps require authorization of up to \$300,000 to conduct a detailed, scientific, and statistically valid waste characterization study of both recycling and garbage for all three of the City's hauler districts. Inclusive of the funds from Norcal, a total of \$400,000 will be spent to conduct the characterization study of both recycling and garbage totes in an effort to study ways to improve and increase recycling behaviors.

Upon completion of the study, staff will provide Council with the findings and recommendations in winter 2006.

COORDINATION

This MBA has been coordinated with Environmental Services, the City Manager's Budget Office and the City Attorney's Office.

/s/
John Stufflebean
Director, Environmental Services

For questions please contact Donna Peralá, Supervising Environmental Services Specialist, at (408) 975-2511.

Attachment A

Judgment Timeline

Date	Activity	Status
June 2003	City issues Cease and Desist Order against California Waste Solutions	Complete
Jan/Feb 2004	Permanent Injunction and Final Judgment pursuant to Stipulation between the City of San José and CWS. 1 st Installment Payment - \$50,000.	Complete
Aug 2004	“Final List” of violations issued by City Attorney’s Office to CWS, per paragraph 11 of the Judgment	Complete
Dec 2004	2 nd Installment Payment - \$50,000	Complete
Dec 2005	3 rd Installment Payment - \$50,000	Complete

Waste Characterization Study Timeline

Date	Activity	Status
Dec 2004	2 nd Amendment to Agreement between San Jose and Norcal approved by Council, including \$100,000 from Norcal towards characterization study	Complete
Fall 2005	Franklin Associates selected as Project Manager for independent materials characterization study	Complete
Spring 2006	Draft study protocol completed by Franklin Associates	Complete
June 2006	Budget Add approval of \$300,000 for consultant to conduct characterization study	Pending
July 2006	Release of RFP to select characterization study consultant	Pending
Fall 2006	Characterization study conducted	Pending
Dec 2006	Characterization study results presented to Council	Pending